

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SAMMY M. GARCIA,)	
ID # 675975,)	
Petitioner,)	
vs.)	No. 3:15-CV-0792-D
)	
)	
WILLIAM STEPHENS, Director,)	
Texas Department of Criminal)	
Justice, Correctional Institutions Division,)	
Respondent.)	

ORDER

After making an independent review of the pleadings, files, and records in this case, and the June 24, 2015 findings, conclusions, and recommendation of the magistrate judge, the court concludes that the findings and conclusions are correct. It is therefore ordered that the findings, conclusions, and recommendation of the magistrate judge are adopted.

Petitioner's July 7, 2015 motion for evidentiary hearing (supported by his July 7, 2015 affidavit) is denied because petitioner has not shown that an evidentiary hearing, if held, could materially affect the basis on which his petition is being dismissed as barred by limitations. In particular, even if petitioner did not file the state habeas petitions that he questions, this would not change the fact that because petitioner's state conviction became final before AEDPA's enactment on April 24, 1996, he had one year after the date of the enactment of the statute in which to file a federal petition for a writ of habeas corpus. Nor does it show a basis for the court to find that the limitations period was equitably tolled.

Considering the record in this case and pursuant to Fed. R. App. P. 22(b), Rule 11(a) of the Rules Governing §§ 2254 and 2255 proceedings, and 28 U.S.C. § 2253(c), the court denies a certificate of appealability. The court adopts and incorporates by reference the magistrate judge's


findings, conclusions, and recommendation filed in this case in support of its finding that the petitioner has failed to show (1) that reasonable jurists would find this court's "assessment of the constitutional claims debatable or wrong," or (2) that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S.473, 484 (2000). If petitioner files a notice of appeal,

() petitioner may proceed *in forma pauperis* on appeal.

(X) petitioner must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis*.

SO ORDERED.

July 28, 2015.


SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE